

Application No. 10/087,107  
Amendment dated August 4, 2006  
Reply to Office Action of May 5, 2006

## **REMARKS**

### **Status Of Application**

Claims 2-49 are pending in the application; the status of the claims is as follows:

Claims 2-17 and 32-39 are withdrawn from consideration.

Claims 18-31, and 40-49 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 8-14, and 21-25 of U.S. Patent No. 6,394,811 to Finitzo et al.

Claims 18-24, and 40-44 are rejected under 35 U.S.C. § 101 because the claimed invention is non-statutory.

To date, no Notice of Draftsperson's Patent Drawing Review has been received. Applicant(s) respectfully request receipt of this document when it becomes available. Please note that the original drawings filed in the patent application are "formal" drawings.

### **Claim Amendments**

Claims 18 and 40 have been amended, and new claims 50 and 51 have been added, to more particularly point out and distinctly claim the subject matter of the claimed invention. These changes are not necessitated by the prior art, are unrelated to the patentability of the invention over the prior art, and do not introduce any new matter.

### **35 U.S.C. § 101 Rejection**

The rejection of claims 18-24, and 40-44 under 35 U.S.C. § 101 as the claimed invention is non-statutory, is respectfully traversed based on the following.

Claim 18 has been amended to recite a method of processing data “representing results of a diagnostic or screening test” including, *inter alia*, a step of outputting a conclusion “comprising an indication of the outcome of the diagnostic or screening test.” As amended the method of claim 18 produces a concrete, tangible, and useful result in that the method provides a conclusion as to the outcome of a diagnostic or screening test. The result of the method is “tangible”, i.e., not abstract, because the method provides a conclusion including the outcome of the diagnostic or screening test (See OG Notice 22 November 2005). For example, an illustrative embodiment of the invention disclosed in the specification provides a result as to whether the test passed or failed, whether a referral is needed, or whether the test was technically valid. It is respectfully submitted, therefore, that amended claim 18 is now in condition for allowance.

Claim 40 has been amended to recite a method of analyzing data comprising, *inter alia*, steps of “defining features characteristic of a predetermined type of data representing results of a test” and outputting a conclusion “said conclusion an indication of the outcome of the test.” It is respectfully submitted, that for at least the same rationale as provided above in respect of claim 18, the method of amended claim 40 produces a “tangible” result. Therefore, claim 40 is in condition for allowance.

Accordingly, it is respectfully requested that the rejection of claims 18-24, and 40-44 under 35 U.S.C. § 101 as the claimed invention is non-statutory, be reconsidered and withdrawn.

#### **New Claims**

New claims 50 and 51 depend, respectively, from claims 18 and 40. It is respectfully submitted, that claims 50 and 51 distinguish the prior art for at least the same reasons as the claims from which they depend.

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**Double Patenting Rejection**

A terminal disclaimer prepared and executed in accordance with 37 CFR 1.132 and MPEP §§ 804 and 1490 is submitted herewith. It is respectfully submitted that the terminal disclaimer overcomes the provisional rejection of claims 18-31, and 40-49 under the judicially created doctrine of double patenting over claims 8-14, and 21-25 of U.S. Patent No. 6,394,811, be reconsidered and withdrawn.

**CONCLUSION**

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment does not increase the number of independent claims, increases the total number of claims by 2 from 48 to 50, but does not present any multiple dependency claims. Accordingly, a Response Transmittal and Fee Authorization form authorizing the amount of \$100.00 to be charged to Sidley Austin LLP Deposit Account No. 18-1260 is enclosed herewith in duplicate. However, if the Response Transmittal and Fee Authorization form is missing, insufficient, or otherwise inadequate, or if a fee, other than the issue fee, is required during the pendency of this application, please charge such fee to Sidley Austin LLP Deposit Account No. 18-1260.

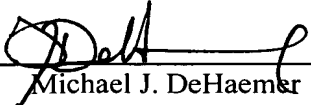
If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee,

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and not submitted herewith should be charged to Sidley Austin LLP Deposit Account No.  
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Respectfully submitted,

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